

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

Tommie A. Harsley, III

Respondent.

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Supreme Court #SC94909

BRIEF OF RESPONDENT TOMMIE A. HARSLEY, III

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TABLE OF AUTHORITIES

Respondent adopts the cases as set forth in the Informant's Brief.

JURISDICTIONAL STATEMENT

Respondent is satisfied with the accuracy and completeness of the Jurisdictional Statement as set forth in the Informant's Brief pursuant to Rule 84.04(f).

STATEMENT OF FACTS

Respondent is satisfied with the accuracy and completeness of the Statement of Facts as set forth in the Informant's Brief pursuant to Rule 84.04(f).

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) FAILING TO ACT WITH REASONABLE PROMPTNESS IN DELIVERING THE FUNDS OF CLIENTS TO CLIENTS OR THIRD PARTIES, IN VIOLATION OF RULES 4-1.3 AND 4-1.15(D).

(B) FAILING TO APPROPRIATELY SAFEGUARD CLIENTS' PROPERTY PURSUANT TO RULE 4-1.15 BY:

1. COMMINGLING PERSONAL FUNDS AND CLIENT FUNDS IN THE TRUST ACCOUNT WHEN RESPONDENT DEPOSITED CASH OR EARNED FEES INTO HIS TRUST ACCOUNT AND WHEN RESPONDENT FAILED TO WITHDRAW EARNED FEES FROM HIS TRUST ACCOUNT, IN VIOLATION OF RULES 4-1.15(A) AND 4-1.15(B);

2. FAILING TO KEEP COMPLETE RECORDS OF THE TRUST ACCOUNT THAT EXPRESSLY REFLECT THE DATE, AMOUNT, SOURCES AND EXPLANATION FOR ALL WITHDRAWALS AND DISBURSEMENTS OF THE FUNDS OR OTHER PROPERTY OF CLIENTS OR OTHER PARTIES IN VIOLATION OF RULE 4-1.15(F);

3. FAILING TO PERFORM A RECONCILIATION OF THE ACCOUNT REASONABLY PROMPTLY EACH TIME AN OFFICIAL STATEMENT FROM THE FINANCIAL INSTITUTION IS PROVIDED OR AVAILABLE, IN VIOLATION OF RULE 4-1.15(A)(7); AND,

4. USING THE TRUST ACCOUNT TO PAY PERSONAL EXPENSES IN VIOLATION OF RULE 4.1.15(A).

Respondent hereby adopts the argument of Informant in its Brief and as agreed in the Joint Stipulation.

II.

THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS AND PRIOR CASE LAW SUGGEST THAT AFTER CONSIDERATION OF RESPONDENT'S MITIGATING FACTORS IN THIS CASE, INCLUDING RESPONDENT'S LACK OF DISCIPLINARY HISTORY AND NO EVIDENCE THAT RESPONDENT'S CONDUCT CAUSED INJURY, AND THE REMEDIAL MEASURES TAKEN BY RESPONDENT TO CORRECT HIS MISCONDUCT, PROBATION IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT'S FAILURE TO SAFEGUARD PROPERTY (IN VIOLATION OF RULE 4-1.15) AND FAILURE TO PROMPTLY REMIT PAYMENT TO CLIENTS OR THIRD PARTIES (IN VIOLATION OF RULES 4-1.15 AND 4-1.3) WAS NOT INTENTIONAL, THAT SUCH MISCONDUCT CAN BE CORRECTED AND RESPONDENT'S RIGHT TO PRACTICE LAW NEEDS TO BE MONITORED RATHER THAN REVOKED.

Respondent hereby adopts the argument of Informant in its Brief and as agreed in the Joint Stipulation.

CONCLUSION

After consideration of the facts, Respondent's cooperation with the process, Respondent's remedial actions and the guidance provided by the ABA *Standards*, Respondent Tommie A. Harsley, III, respectfully requests that this Honorable Court adopt the Panel's and Informant's recommendation that his license be suspended indefinitely with no leave to apply for reinstatement for twelve (12) months, with such suspension to be stayed during a twenty-four (24) month probationary period. Such a suspension allows Respondent to continue the practice of law and continue his education on the fiduciary duties under Rule 4-1.15 and law practice management during the probationary period.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2015, Respondent's Brief was sent through the Missouri Supreme Court e-filing system to:

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CERTIFICATION: RULE 84.06(C)

I certify to the best of my knowledge, information and belief, that this Brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b)
3. Contains 476 words, according to Microsoft Word, which is the word

processing system used to prepare this brief.

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